

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

*PLM-II
J. Mitchell*

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FILE: B-193635

DATE: January 17, 1979

MATTER OF: George R. Jones, Jr.

[Claim For Pay and Allowances Incident to service in U.S. Navy]

DIGEST: 1. Upgrading of discharge issued in 1954 by Board for the Correction of Naval Records in 1976 does not change fact that member was discharged and is therefore not entitled to pay and allowances for period following discharge to the end of the enlistment in which he was serving.

- DLG 00643

2. Claim for pay and allowances for period of enlistment which was not served because of discharge began to accrue at time of discharge in 1954. Action by correction board upgrading discharge has no affect on fact of discharge. Therefore, claim received in General Accounting Office more than 23 years after claim first accrued is barred from consideration by 31 U.S.C. 71a, which requires claims against the United States be filed in this Office within 6 years from the date it first accrues.

This decision is the result of an appeal to an action by our Claims Division informing Mr. George R. Jones, Jr., that his claim for pay and allowances incident to his service in the United States Navy is barred by the act of October 9, 1940, 54 Stat. 1061, as amended by Title VIII of Public Law 93-604, approved January 2, 1975, 88 Stat. 1959, 1965, 31 U.S.C. 71a (1976).

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Apparently, in 1976 the Board for the Correction of Naval Records upgraded Mr. Jones' 1954 discharge from the Navy to a general discharge. Mr. Jones indicates that following the upgrading of his discharge he received payments representing mustering out pay and accrued leave. He contends that he is entitled to payment for that portion of his enlistment, which he was precluded from serving by his 1954 discharge. He is alleging that the 1954 discharge was illegal and invalid. He cites various court cases in support of his claim.

From the information provided by the Navy, it appears that the correction board merely changed the character of Mr. Jones' discharge without concluding that his original discharge had been

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illegal. As a result he was entitled to certain entitlements incident to his discharge such as payment for accrued leave which he indicates he has been paid. However, it does not appear that the correction board took any action concerning his records to show that he was discharged at any other date than his original discharge or that his original discharge was invalid.

In this regard, it is well established that an enlisted member's discharge severs any contractual relationship with the Government with regard to entitlement to pay and allowances. A subsequent change in the character of the discharge has no bearing on the fact of separation from the service. See B-189212, July 5, 1977, and decisions and court cases cited therein.

We have carefully reviewed the cases cited by Mr. Jones. In each of the cases where the plaintiff prevailed, a finding that the discharge was illegal had been made. No such finding was made by the correction board in Mr. Jones' case. The correction board apparently found only that the character of his discharge should be upgraded. It did not find or correct his records to show that the discharge was void.

In cases where the record is corrected to show a change in the character of discharge only, the member is entitled only to the benefits he would have received had the initial discharge been under honorable conditions. The member is not entitled to the pay and allowances for the unexpired portion of his enlistment or term of service. See Carter v. United States, 206 Ct. Cl. 61 (1975).

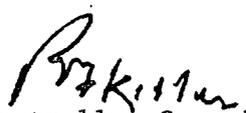
In the absence of a correction board action correcting his record to show that his discharge was void, any claim that Mr. Jones had for pay and allowances for the unserved portion of his enlistment based on the validity of his discharge began to accrue at the time of his discharge from the Navy.

Section 71a of title 31, United States Code, provides that any claim against the United States cognizable by the General Accounting Office must be received in that Office within 6 years from the date it first accrues or be forever barred.

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Mr. Jones' claim was first received in this Office on July 26, 1978, more than 23 years from the date his claim first accrued, which was at the time of his discharge in 1954.

Accordingly, this Office is without authority to consider his claim and the action of the Claims Division must be sustained.


Deputy Comptroller General
of the United States